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Attorneys for Defendant
JEANS CITY USA, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

| | | |
|----------------------|---|---------------------------------------|
| LEVI STRAUSS & CO., |) | |
| |) | Case No. CV-01639-WHA |
| Plaintiff, |) | |
| |) | DEFENDANT JEANS CITY USA, |
| v. |) | INC.'S ANSWER AND AFFIRMATIVE |
| |) | DEFENSES TO LEVI STRAUSS & |
| JEANS CITY USA, INC, |) | CO.'S COMPLAINT FOR |
| |) | TRADEMARK INFRINGEMENT, |
| Defendant. |) | TRADEMARK DILUTION AND |
| |) | |
| |) | JURY TRIAL DEMANDED |
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Defendant Jeans City USA, Inc. ("JEANS CITY") answers the Complaint of Plaintiff Levi Strauss & Co. ("LS&Co. ") and asserts Affirmative Defenses and Counterclaims as follows:

JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT

1. The allegations contained in Paragraph 1 are conclusions of law requiring no response from JEANS CITY, and therefore none is made.

2. JEANS CITY admits that it transacts business in the district, but is without sufficient information to admit or deny the remaining allegations in Paragraph 2, and therefore denies the same.

3. The allegations contained in Paragraph 3 relate to the Court's procedures regarding assignment of cases requiring no response from JEANS CITY, and therefore none is made.

PARTIES

4. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 4, and therefore denies the same.

5. JEANS CITY is without sufficient information to admit or deny the allegations contained in the first sentence of Paragraph 5, and therefore denies the same. JEANS CITY admits that it offers for sale and has sold clothing, including jeans, through its website and in other locations outside of California, but otherwise denies the second sentence of Paragraph 5. JEANS CITY denies the third sentence of Paragraph 5.

FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS

6. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 6, and therefore denies the same.

7. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 7, and therefore denies the same.

LS&CO.'s Arcuate Stitching Design Trademark

8. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 8, and therefore denies the same.

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9. JEANS CITY admits only that the exhibits attached to the complaint as Exhibit B purport to be copies of the specified registrations; JEANS CITY is without sufficient information to admit or deny all other allegations in Paragraph 9 (a)-(e), and therefore denies the same.

10. Denied.

LS&CO.'s Tab Device Trademark

11. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 11, and therefore denies the same.

12. JEANS CITY is without sufficient information to admit or deny the allegations contained in Paragraph 12, and therefore denies the same.

13. JEANS CITY admits only that the exhibits attached to the complaint as Exhibit D purport to be copies of the specified registrations; JEANS CITY is without sufficient information to admit or deny all other allegations in Paragraph 13 (a)-(g), and therefore denies the same.

Defendant's Infringement of LS&CO.'s Trademarks

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

FIRST CLAIM
FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. §§ 1114-1117; Lanham Act § 32)

19. The allegations in Paragraph 19 require no separate answer from JEANS CITY, however, JEANS CITY incorporates herein by reference its responses to each of the allegations contained in Paragraphs 1 through 18 of this Complaint.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

SECOND CLAIM
FEDERAL UNFAIR COMPETITION
(False Designation of Origin and False Description)
(15 U.S.C. §§ 1125(a); Lanham Act § 43(a))

24. The allegations in Paragraph 24 require no separate answer from JEANS CITY, however, JEANS CITY incorporates herein by reference its responses to each of the allegations contained in Paragraphs 1 through 23 of this Complaint.

25. Denied.

26. Denied.

THIRD CLAIM
FEDERAL DILUTION OF FAMOUS MARK
(Federal Trademark Dilution Act of 1995)
(15 U.S.C. § 1125(c); Lanham Act § 43(c))

27. The allegations in Paragraph 27 require no separate answer from JEANS CITY, however, JEANS CITY incorporates herein by reference its responses to each of the allegations contained in Paragraphs 1 through 26 of this Complaint.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

FOURTH CLAIM
CALIFORNIA DILUTION AND TRADEMARK INFRINGEMENT
(Cal. Bus. & Prof. Code §§ 14320, 14330, 14335, 14340)

32. The allegations in Paragraph 32 require no separate answer from JEANS CITY, however, JEANS CITY incorporates herein by reference its responses to each of the allegations contained in Paragraphs 1 through 31 of this Complaint.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

FIFTH CLAIM
CALIFORNIA UNFAIR COMPETITION
(Cal. Bus. & Prof. Code § 17200)

37. The allegations in Paragraph 37 require no separate answer from JEANS CITY, however, JEANS CITY incorporates herein by reference its responses to each of the allegations contained in Paragraphs 1 through 36 of this Complaint.

38. Denied.

39. Denied.

PRAYER FOR JUDGMENT

40. – 52. The balance of LS&Co.'s Complaint consists of prayers for relief to which no specific answer is required, and JEANS CITY denies that LS&Co. is entitled to any of the relief requested in Paragraphs 40 – 52.

JEANS CITY'S AFFIRMATIVE DEFENSES

1. LS&Co.'s Complaint fails to state a claim upon which relief may be granted.

2. LS&Co.'s claims for relief are barred by the doctrine of waiver.

3. LS&Co.'s claims for relief are barred by the doctrine of estoppel.

4. LS&Co.'s claims for relief are barred by the doctrines of laches and acquiescence.

5. LS&Co.'s claims for relief are barred on the ground that LS&Co. has consented to the acts alleged to have been performed by JEANS CITY.

6. There is no likelihood of confusion between LS&Co.'s mark and JEANS CITY's mark as a matter of law.

7. Pocket stitching designs similar to LS&Co.'s marks are in common use by third parties unrelated to JEANS CITY.

1 8. LS&Co.'s claims for relief are barred by the doctrine of unclean hands.

2 9. LS&Co., as shown by its judicial admissions, statements, and other conduct has
3 abandoned its arcuate trademark by knowingly allowing its so-called "arcuate" mark to be used by
4 third parties which has caused it to lose its significance as a mark..

5 10. LS&Co. has engaged in trademark misuse.

6 11. LS&Co.'s claims for relief are barred, in whole or in part, because it has suffered no
7 detriment, injury or damages.

8 12. If LS&Co suffered any injury or damages, then it failed to mitigate its injury or
9 damages.

10 13. If LS&Co. suffered any injury or damages, then that injury or damage is offset by the
11 injury or damages that JEANS CITY has suffered as a result of LS&Co.'s actions.

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13 JEANS CITY hereby demands a trial by jury on all issues so triable.

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15 DATED: June 24, 2008

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

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17 By /s/
18 Rachel R. Davidson
19 Attorneys for Defendant
20 JEANS CITY USA, INC.
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